

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

CAROL L. FULLER

PLAINTIFF

v.

4:07-CV-01120-WRW

FIBER GLASS SYSTEMS, LP

DEFENDANT

ORDER

Pending is Defendant's Renewed Motion for Judgment as a Matter of Law (Doc. No. 101). Plaintiff has responded,¹ and both parties have replied.²

While *Dominic v. DeVilbiss Air Power Company*³ is similar in some respects to the case at bar, I believe it is distinguishable in three ways. First, while it appears that Mr. Stockman performed a reasonably good in-house investigation, there was no outside, detached employment law expert to evaluate all the facts and circumstances involved. Second, I am not satisfied that Defendant's racial harassment policy at the time of Plaintiff's employment was "zero-tolerance." Plaintiff contends that Defendant's policy is more reactive -- a wait and see approach -- as opposed to the defendant's proactive and preventive method in *Dominic*.⁴ I agree. Besides, Defendant concedes that its policy does not contain the phrase "zero-tolerance."⁵ And third, I don't recall that the evidence revealed that Defendant limited the direct contact with the supervisor who, according to Plaintiff, took no action on her complaints.

¹Doc. No. 109.

²Doc. Nos. 115, 116.

³493 F.3d 968 (8th Cir. 2007).

⁴*Id.*

⁵Doc. No. 115 ("Defendant's policies do not contain the phrase 'zero tolerance.'").

Additionally, I note that defense counsel cites no authority for its argument that Juror No. 11's statement "demonstrates that no reasonable jury could conclude punitive damages should be assessed against FGS,"⁶ and I doubt that there is any. I'm satisfied that Judge Deere's response to defense counsel's request to interrogate the juror was proper, and I see this as no reason to remove punitive damages from a jury's consideration. Accordingly, Defendant's Renewed Motion for Judgment as a Matter of Law is DENIED.

IT IS SO ORDERED this 3rd day of June, 2009.

/s/ Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

⁶Doc. No. 101.